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MARTIAL LAW AND MILITARY LAW.

(From the *Corinthian* for April.)

1. **MARTIAL LAW** and military law are totally distinct from, and indeed opposed to each other. Military law is a code which, framed for the guidance of a particular class of the community—the standing army—exists side by side with the common and statute law of the land, and its tribunals exercise their functions independently of and yet in harmony with the ordinary courts of justice, with which they do not and cannot interfere.

2. **Military law** also exists in time of peace; although when martial law has been proclaimed, such of its enactments as may be necessary, for, e.g., regulation of time of service, rates of pay, and generally for maintenance of discipline, are still of force. But its very existence is annual only; depending for that existence on a "standing army" as it is termed, to which class its operation is restricted, and out of which it is not permitted to pass. It is, in fact, a *code*. Intended for the preservation of military order and discipline, its provisions are clearly defined, and the sanctions annexed to their violation distinctly laid down. It may be described as a body of law framed, not for a state of aggression or of active hostilities, but designed for the better regulation of a body of forces, the object of which avowedly is, as defined by Parliament, safety, defence, and preservation.

3. On the other hand, **martial law** presents considerations wholly different from these, and opposed to them. In the first place, it exists during suspension, throughout the country which is the seat of war, of the ordinary methods of civil process. It supersedes, as a general rule, the ordinary courts of justice, and in their place substitutes an arbitrary military tribunal, the maxim being, *inter arma leges silent*. "According to every definition of martial law," says a learned American lawyer, "it supersedes for the time being all the laws of the land, and substitutes in their place no law: that is, the mere will of the military commander." Further, martial law is not, like military law, confined to one class only of the community, but includes in its operation all classes, without distinction, who may be residing in the country which is the seat of war. And this is a consequence arising out of a state of facts. For the proclamation which under circumstances of admitted necessity calls martial law into existence, is not to be considered as the legal creation of that law, but is merely a statement of facts which of their own force have rendered that law necessary. In a beleaguered city, for example, the state of siege lawfully exists because the city is beleaguered. Martial law in brief involves in its own nature, and of necessity, the suspension of the ordinary securities for civil liberty; and their merging in the absolute will of the individual who for the time being is clothed with military command. So much, indeed, is this the case, that in the United States, where the safeguards for the liberty of the subject are if anything more stringent and more jealously guarded than with us, martial law has been proclaimed for the sole purpose that it may bring with it what by American lawyers has been held to be its natural and proper consequence,—the placing of the laws of the land in abeyance, and substituting in their place the arbitrary, and for the time irresponsible, will of a military superior.

It is not by this to be understood that the proceedings of the ordinary courts of justice must of necessity in all cases cease in a country subject to martial law. They may exist, and exercise their functions, but they do not do so as of right or as deriving their jurisdiction from the time from the ordinary source which gives validity to their proceedings, but in subordination to military authority, and to the will of the general or other officer in command, by whose permission it is, and under whose direction they conduct judicial business and administer the law. This was the case for instance, when the Duke of Wellington had military occupation of a foreign country; and it may be observed that the definition given of martial law by that high authority is identical with that already quoted; "martial law," he declared, "was neither more nor less than the will of the general who commands the army."

Military law, therefore, or the rules and articles of war for the government of the land or naval forces of any country, differs from martial law in the following substantial particulars, which by way of recapitulation we shall state. 1. In the classes over which their operation extends; military law affecting the army or navy alone, martial law the whole community. 2. In the time of their operation; the former being of force only, or mainly, in time of peace, the latter in time of war; the duration of the one being fixed and certain, that of the other arbitrary, and depending on the will of an individual and the existence of a certain state of facts. 3. In the mode of their creation; military law having a statutory existence under certain Acts of Parliament, martial law being called into existence arbitrarily and by force of special circumstances. In fact, the legal conditions annexed to these states respectively differ not so much in degree as in kind; and the reasoning which would be applicable to one would be of little force or validity when applied to the other.

4. Between the exceptional state of things known as martial law, and that normal condition of political tranquillity when the laws of a country are interpreted and justice administered by the ordinary methods of civil process, there occasionally intervenes a third state, of which we have at the present time and amongst ourselves a chief example. This takes place when the ordinary safeguards which the law has provided for the liberty of the subject are in certain districts and as against certain persons, for a time, set aside by a suspension of the Habeas Corpus Act; a condition of things which by some common law authorities and commentators has not seldom been identified with martial law. But although the relation is intimate between the proclamation of martial law and the suspension of the Habeas Corpus Act, yet neither the mode of procedure nor its results are in these cases by any means the same. In the one case—that of the suspension of the Habeas Corpus Act—civil authority is, indeed, as against certain suspected persons, in abeyance; but its place is not taken, at least in this country it has not been taken, by either the law military or the law martial. Those who have been deprived of their liberty in consequence of the Act being suspended may, indeed, be kept in confinement for an indefinite period until tranquillity is restored and the ordinary legislative securities against arbitrary imprisonment are again in force; but if they are brought to trial it must be before the regularly constituted tribunals, and the trial must be conducted by the ordinary means, and in due form of law. The suspension

of the Habeas Corpus Act is also itself the result of a solemn and deliberative act of the Legislature, which alone can make such suspension legal, and which also determines its duration. In the other case, that of the law martial, it is as has been shown, of the essence of such a condition of things that military authority, and the dispensing of justice according to the rule and precept of military procedure, should reign supreme over every other form of jurisdiction.

5. There is also an important distinction to be taken between the proclamation of martial law in any part of Great Britain and its proclamation in a colony at a distance from the seat of the central government. When for any cause the ordinary administration of justice has been arrested in any part of Great Britain, recourse is had to Parliament, either to authorise martial law in advance, or to indemnify Ministers for the responsibility assumed; suspending the writ of Habeas Corpus. Various Acts of Parliament have, accordingly, from time to time, been passed, to give constitutional existence to the fact of martial law, or, more correctly speaking, of the suspension of the Habeas Corpus Act. The Act 57 George III. c. 3, for the case of an apprehended insurrection in the metropolis and in other parts of Great Britain, the indemnifying Act of 58 George III. c. 6, the Act 3 and 4 George IV. c. 4, designed for the suppression of local disturbances in Ireland, and the recent Acts, one of which is now in force, suspending the writ of Habeas Corpus in that country, are sufficient to show that in Great Britain a state not only of martial law, strictly speaking, with its incidents, but even where the ordinary course of justice is but locally and for a time interrupted, cannot exist without the exercise of the power of the supreme legislative authority. But as to what circumstances will justify the proclamation of martial law in a colony or settlement remote from the seat of the central authority, and when there are no means of obtaining the previous sanction of Parliament or Government to those measures which may be necessary for suppressing disturbance and restoring tranquillity, is a question surrounded with difficulty, and involves conditions which in the jurisprudence of this country have not received any exact legal examination.

6. With us in England, and in the United States also—whose legal system in this, as in so many other instances, corresponds nearly to our own—when the ordinary guarantees are once removed everything is left to the mere will of the Executive, or the person clothed with supreme military authority. There exist, however, it should be known, in some of the principal States of Europe, legal provisions by which the *etat de siege*, or what corresponds to our martial law or suspension of the Habeas Corpus, is endeavored to be regulated in advance by way of legislative enactment. The *etat de siege* in France is defined to be "a measure of public security, which temporarily suspends the empire of the ordinary laws in one or more cities, in a province, in an entire country, and then considers them to be subject to the laws of war." Before 1789 no legislative provision had defined what should be understood by a state of siege, though it had often occurred. By the laws of the 10th July, 1791, and that of the 10th Metidor, year V, the cases of defence against foreign invasion and of internal insurrection had been provided for. Further provisions were made by the imperial decree of December 24th, 1811, and the law of the 9th and 11th August, 1849, by which the whole subject is at present governed. And by the twelfth article of the Constitution of the 14th January, 1852, modified by the Senate Consult of November of the same year, it is declared that "the Emperor has a right to declare a state of siege (*etat de siege*) in one or more departments, subject to a reference to the Senate with the least possible delay (*sous le referer au senat dans la plus brief delai*). The consequences of a state of siege are regulated by law." In particular cases, indeed, the governors of colonies and commanders of military posts or places may declare a state of siege; but they are to render an immediate report, and if the central Government does not think proper to raise the siege, a proposition must be made without delay to the Legislature to maintain it.

7. The constitutions of Belgium and of Italy, which are express in their guarantees of individual liberty and private rights, expressly provide that the king has no other power than that which the constitution, and the laws passed in accordance with the constitution, give him; and the king is prohibited from suspending them or dispensing with their observance; and so strictly under the law of Italy is this provision adhered to, that in the war of 1859, when it was requisite for the very existence of Sardinia that the Executive Government should be invested with extraordinary authority, Count Cavour asked from the Chambers full powers for the king, including the right of suspending the liberty of the Press and individual liberty; and in doing so he added, that the institutions of the country would remain intact, and that the question was only with regard to a momentary suspension.

8. The exact limits, therefore, within which the authority of a governor or other person invested with supreme command may be probably exercised during a state of martial law, or what the circumstances should be which would justify martial law being proclaimed, are questions which the Legislature and courts of this country—in this differing from the jurisprudence of many States of Europe—have left unsettled. One case only is to be found in the books in which the position was discussed, and it may be interesting to give a brief outline of its facts; not only on account of the great eminence of the Judge—Lord Mansfield—who decided it, but also on account of its bearing on proceedings now in agitation in this country in connection with the recent disturbances in the colony of Jamaica. For the cases that have been referred to arising out of insurrectionary acts in Ireland are not strictly in point; as in these the substituted law was military rather than martial, depending for its maintenance on the authority of Parliament, and having its sanctions enforced according to the ordinary forms of judicial procedure.

9. In *Fabrigas v. Mostyn*, in which case the defendant was Governor of Minorca, then a dependency of the British Crown, the facts were, as alleged by the plaintiff, that the defendant had by force of arms made an assault on Fabrigas, and beat and wounded and ill-treated him, and then there imprisoned him without reasonable or probable cause, contrary to the law and custom of the realm; and finally compelled him, Fabrigas, to depart from Minorca, and caused him to be carried to

• *Steph. Com.*, vol. 1, p. 147.
• *Boitellier, Dict. des Sciences*, &c., p. 622. *Traité de Code Civil*, p. 389.
• *See Code Civil*, art. 48, 7, 8, 10, 12, 78, 130. *Annuaire de la Cour de Cassation*, 1858-9, p. 197. *Statute*, Act 26, 27, 28.
• *Reported* *Courier*, 161, and 2 *Smith's L. Cas.*, p. 628.

Carthage, in Spain, to the plaintiff's damage, of £10,000. The defendant, the Governor, pleaded a special justification, that he, Governor of the said island of Minorca, during the time, and was invested with and did exercise all the powers, privileges, and authorities, civil and military, belonging to the Governor of Minorca; and that the said Fabrigas was guilty of a riot, and was endeavouring to cause a mutiny of the inhabitants in breach of the peace; and that the said Governor, in order to preserve the peace, was compelled to banish, and did banish, the plaintiff from the island. Much extraneous matter, purely technical, and which, indeed, the case eventually turned, was mixed up with the larger question as to the Governor's responsibility; but on this point the Court was clear in its opinion that an action for trespass and false imprisonment would lie in England by a native Minorquin against the Governor for such injury committed by him in Minorca; and that if the imprisonment was justifiable, the Governor must plead his authority specially.

10. In this celebrated case the plaintiff, Fabrigas, did not deny that if the facts were so, as stated, the defendant, the Governor, would be justified in the exercise of the authority complained of; but he denied, and put in issue whether the fact of the alleged acts of detention was true. And Lord Mansfield, in delivering the judgment of the Court, declared in the most emphatic terms, that although locally and during his government no action would lie against the Governor, yet for an abuse of the authority delegated to him by the king's letters patent under the Great Seal, he could be tried in the king's courts. "So that," observed the Chief Justice, emphatically, "the Governor must be tried in England to see whether he has exercised the authority delegated to him legally and properly; or whether he has abused it in violation of the laws of England and the trust so reposed in him. It does not follow from hence," proceeded his Lordship, "that let the cause of action arise where it may, a man is not entitled to make use of every justification his case will admit of which ought to be a defence to him. If he has acted right according to the authority which he is invested, he must lay it before the Court by way of plea, and the Court will exercise their judgment whether it is sufficient justification or not. In this case, if the justification had been proved, the Court might have considered it a sufficient answer; and if the nature of the case would have allowed of it, might have adjudged that the raising of a mutiny was a good ground for such a summary proceeding. I can conceive cases in time of war in which a governor would be justified, though he acted very arbitrarily, in which he would not be justified in time of peace. Suppose, during a siege, or upon an invasion of Minorca, the Governor should judge it proper to send people out of the island, and take them up as spies, it would be very fit to see whether he had acted as a governor of a garrison ought, according to the circumstances of the case."

11. This judgment contains the principle to which, under the existing law of England, any similar case must now be referred, and on which it must be decided. It places, as we have observed, no limits on the exercise of authority, nor does it define *ab initio* what state of facts would or would not justify in a disaffected district and for purposes of public peace, the proclamation of martial law. But it does decide: 1. That the authority of a governor or other person in supreme command is, during a time of insurrection, practically unlimited save by the necessities of his position. 2. That for excess of jurisdiction he is amenable, after his jurisdiction as governor has ceased, to the King's Courts, at the suit of private persons (or under the present law, if they are dead, at the suit of their representatives), who may have received damage from his acts; and 3. That the question as to whether he has exceeded the legitimate bounds of his authority will be for the Court to decide on a plea of justification being raised, based on the circumstances in which the district or colony was placed during the period of his command.

NEW REVERIES AND ALTAR IN WESTMINSTER ABBEY.

(From the *Illustrated News*, April 27.)

THE works of restoration which have recently been executed in Westminster Abbey, and were for the first time exhibited, in a nearly complete state, at the services of Easter Sunday last, include a new retable or altar-screen, with the altar-table, the sedilia, and the new tessellated pavement surrounding the altar.

The ancient altar-screen was of extreme richness, and appears—so from the style of the remains, and some vestige of an heraldic device found on one of them—to have been executed about the time of King Edward IV. But this treasure of mediæval art was sacrilegiously mutilated in the reign of Queen Anne, to make way for a "classic" marble altar-piece originally intended for Whitehall Chapel, but which was presented by that queen to the Abbey. Probably we may regard the circumstance as one of the earliest indications of the revival of Gothic art, that, in 1824, this discordant addition to the church was taken down. On its removal the old screen was found to have been almost cut to pieces; enough, however, could be traced out to prove that its design was in many respects the same as that of the back or eastern side remaining of the same screen, which faces the Chapel of King Edward the Confessor. Mr. Matthew Wyatt, who was then the architect to the Dean and Chapter, employed Bernasconi, the celebrated Italian modeller, to restore the screen in his artificial stone, a work which he executed with great skill. A sham stone altar was erected at the same time, consisting, it is said, of a pile of street paving as a core, finished in the front and at the sides with ornamental plaster-work, by Bernasconi, the slab forming its top being of black marble. In even worse taste, a monument was also erected on the site of the old sedilia, in commemoration of King Sebert, the traditional founder of the Abbey. This was constructed of brick, cement, and tar cord.

Of late years it was, however, strongly felt that all these mean and artificial materials were unworthy the most conspicuous and hallowed part of the sanctuary of a sacred edifice that is virtually the principal cathedral of reformed England. Accordingly the present restorations were originated by the Rev. Lord John Thynne, the Sub-dean; and their design and superintending were intrusted to Mr. Gilbert Scott, R.A., who has done so much towards illustrating and preserving the antiquities of the Abbey. It was resolved to retranslate into alabaster and marble the work of the retables, which had been reproduced in artificial stone in 1824, subject, however, to any modifications which might be authorised on finding evidence of deviation from the original design. In doing this, great help has been received from Mr. Brown, who directed the work for Bernasconi. Some fragments also of the original retables have been found.

We should mention that in the Abbey are preserved under glass—and still bearing vestiges or evidences proving the original enrichment to have consisted of delicate tempera paintings, mosaics, gildings, and precious stones—the remains of what some consider to have been an altar frontal, but which, with greater probability, M. Viollet le Duc and others think was a retableum: its date is decided by the occurrence of castles—i.e., the device of Queen Eleanor of Castile. Whether this relic did or did not serve as a retableum in the Abbey, it appears to have been thought advisable to offer it only in order, we believe, to determine the length of the central recess of the retables, and correspondingly of the altar-table—viz., 11 feet. In that central recess, under Bernasconi's five beautiful canopies (then intended to be reproduced in alabaster), it was decided to insert a mosaic picture of "The Last Supper." The cartoon of this picture was designed and drawn in colours, full-sized, by the artist-firm of Clayton and Bell, and the work has been reproduced in mosaic by Dr. Salviati. We observe with much interest the re-introduction into the venerable edifice, after a lapse of about six centuries, of enamel mosaics of Italian manufacture. The former examples of this mode of decoration are on the tombs of Edward the Confessor, Henry III., and the son of William de Valence—all of thirteenth-century date and probably by Italian artists.

We have already intimated that the dimensions of the central recess of the retables were determined by the central canopies of the length of the ancient retableum. It was discovered, however, that in placing over the altar these canopies, to correspond with those on the reverse or eastern side of the screen) Bernasconi had departed from the original design; for they were found not to have existed here, the central space having been occupied by a much larger plain recess, no doubt for the reception of a rich retableum. Unfortunately, this was not discovered till after Dr. Salviati had prepared his mosaic. Nevertheless, with a respect for the original design, the intention of which cannot be too much commended, it was determined to dispense with these canopies, notwithstanding that the mosaic would necessarily have to be set in a disproportionate border and the space added to the recess (in about the middle of which—too high, as we think—the mosaic is now placed) would be very difficult to fill, and notwithstanding that Mr. Scott would expose himself to the chance of unfair criticism. It is now decided that this added space shall be filled with a retableum, consisting, in the lower part, of mosaic medallions in relief, framing similar in design to the old retableum, and in the upper part of canopies in metal-work with enamel. The rich materials of which the intended retableum will be composed will doubtless help to give unity to the central recess; but at present the contemplated additions are only represented by cartoons suggestive of their design. We may add that it is likewise proposed to heighten with gilding the details of the architectural portions of the screen—a proposition which, carried out, will, we are satisfied, have the happiest effect. Although the central canopies are suppressed, there are four similar lateral ones (corresponding with those on the other side of the screen), which, for extreme delicacy and elaborateness of execution, are probably the most remarkable pieces of workmanship of our day. There seems little prospect of filling the niches beneath these canopies with statues. The cornice of the screen was found, when opened out in 1824, to have contained a series of sculptured, though unintelligible, subjects, united by a swinging label with esotericisms, similar in arrangement to the series illustrating the life of Edward the Confessor on the other side. These have been replaced by a series of fourteen principal subjects from the life of our Lord, excellently carved by Mr. H. H. Armstrong. No attempt has been made to relieve the long line of the cornice; and here, again, respect for the ancient precedent has led to what, under altered circumstances, is obviously discordant. As a finish, this long line is extremely harsh; but of yore it was not so conspicuously inharmonious, as it then served as a base on which (certainly) stood a crucifix and two figures, or many figures, according to a drawing of Henry VIII.'s time, preserved by the Society of Antiquaries.

The sham stone altar is removed, and, as the Order in Council seems to forbid the use of stone, the altar-table is made of cedar, inlaid with other woods, and of very rich design, the front and sides being ornamented with appropriate scriptural subjects in relief, executed by Messrs. Farmer and Brindley. The old marble slab has, however, been worked into the top, and the border of the same is of peculiarly rich marble.

The so-called monument of King Sebert has been removed, and the stone bench of the sedilia found enclosed within it is now restored. The pavement in front of, and around the altar, was of modern character, and had extended so far forward as to bury a portion of the ancient mosaic pavement of the sanctuary. This is replaced with a tessellated pavement of marbles and enamel mosaic—not very agreeable as a colour combination—and is brought back to its original dimensions, so as to admit of the restoration of the portion of the ancient floor which it had injured and concealed. The cost of these works, which will amount to at least £6000, is defrayed from a fund appropriated to decorative purposes under the special direction of the Rev. Lord John Thynne.

During the progress of the restoration several discoveries of antiquarian interest were made, the chief among which are the finding of the bases of two of the piers of Edward the Confessor's work, now marked by and visible through two trap-doors made in the floor of the sanctuary; and the fact of the marble pillars, against which the screen had been erected, having been previously covered with paper, on which coats of arms had been painted, which are pronounced to have been those of King Edward II. and his Queen, Isabella.

CADGERS.—A life's residence in London has given us a somewhat extensive acquaintance with the cadgers, and pay some amount of costs which her extreme poverty prevented her from doing. She herself a pauper, and her father also, but who had managed to contribute to her maintenance in goal from the charity of others. The sentence of penance was rewarded by a dole, we accidentally encountered smoking his cigar, and attired in morning gown, morocco slippers, and, on the steps of an anything but humble tenement, in one of the second-rate streets of Piccadilly. Truly dignity and impudence were never more conjointly personified! On the 16th instant a great sentence was created in the neighbourhood of the Westminster Bridge Road by the appearance of a female carrying a baby and specimens of croquet work, and in less than five minutes received little more than eighteen donations.—*Parochial Critic*.

SKETCHES BY A LAW REPORTER.*

(From the *Spectator*.)

THERE seems to be a spell cast over everyone who attempts to write about the legal profession, which prevents the production of a really good book. There are many curious points of social and antiquarian interest connected with the practice of the law, and curious stories of traditional gossip and humorous anecdote. Moreover, a real history of the English Bench and Bar, tracing the steps by which it has gradually been formed into the most peculiar of all professions, would be a valuable contribution to the social history of the country. It is assuredly not for want of a worthy theme that successive authors have failed, and we doubt much whether the profession is in general averse to publicity. Few members of it would agree with Lord Lyndhurst's remark to Lord Campbell, that he had added a new terror to death, unless indeed they felt that their lives would not be narrating by a biographer so lengthily and often so unmerciful. Lord Campbell's "Lives of the Chancellors and Chief Justices" were gigantic efforts in the way of book-making; with some unquestionable merits, they have defects at least equally conspicuous, and on the whole they do not extend the reputation which their compiler fairly earned in other fields. We not long ago had occasion to notice Mr. Jeaffreson's "Book about Lawyers," a work more comprehensive in contents, more gossiping in style, and a still more barefaced specimen of book-making than the works of the admirable Chief Justice and maddening Chancellor just mentioned. We have now before us a volume which is as far below Lord Campbell's, as that gentleman's is below Lord Campbell's, a volume which ought never to have seen the light, and which we venture to think, never will have seen it, had not the author, a friend of Lord Lyndhurst, been avowedly a book-maker, and a very clever one. If he would only learn to omit matters which have no perceptible connection with his subject, he would produce books which really are amusing, instead of merely containing grains of amusement intermingled with husk. The present writer, Mr. Bennet, professes to give to the world sketches from his own note-book which he has accumulated during many years of law reporting; and such a series of sketches, by a man possessing a sense of humour, might certainly be amusing. In truth, however, this book is as mere a compilation as Mr. Jeaffreson's, for though the author professes to reproduce his memoranda relating to some of the great judges, compiled with such information from public sources as will make the notes and the statements referred to by them coherent, yet the amount of original stuff contained in his volume is infinitesimal. Much of it is mere reprint of other persons' remarks on matters utterly uninteresting, and the remainder consists of prosy lives of a few eminent judges, such as may be found in any dictionary of biography, uniformly eulogistic in tone, and interspersed with sapient common-places intended for the benefit of junior members of the Bar. The style is slipshod and often positively ungrammatical, and the very few amusing stories which have found their way into these inexpressible dry pages have not been improved in the telling, wherever they differ from the versions given by Lord Campbell or Lord Brougham, to say nothing of Mr. Jeaffreson. Nor do we deem it desirable, as a mere matter of style, to tell the same anecdote, or propound the same moral sentiment, more than once in a book of 218 loosely printed pages.

We must, however, do Mr. Bennet the justice to say that here and there are to be found some in the desert, small scraps of original matter inserted in the dreary waste of common-place, though it is quite another question what the value of these scraps may be when extracted. One Lord Ellenborough, the first great name on his list, has nothing new to tell, except that he himself, when a lad, was left in charge of a brief and undisciplined cause during the accidental absence of the counsel engaged, and that the Chief Justice, not liking to be kept waiting, made him produce the one necessary witness, and finished the cause before the counsel could be called. Concerning Sir Samuel Romilly there is one interesting fact related—that while on a visit to Paris in 1802, during which he saw something of French criminal procedure, he made the following remarks in his diary:—

"After every witness was examined, an examination of the prisoner took place by the judges. This would have much shocked most Englishmen, who have very superstitious notions of the rights and privileges of persons accused of crime. It should seem, however, that if the great object of all trials be to discover the truth, to punish the guilty, and to afford security to the innocent, the mode of examining the accused is the most important, and an indispensable part of every trial. I observed one objection to it, however, which is, that the judges often endeavour to show their ability, and gain the admiration of the audience, by their mode of cross-examination. This necessarily makes them, as it were, parties, and gives them an interest to convict."

There never was a more genuine philanthropist than Sir Samuel Romilly, but his sensitive nature did not warp his judgment. He saw very clearly both the point of essential justice, and the danger of practical abuse, in the French method of examining the prisoner, and it is not much to the credit of English jurisprudence that we have not in sixty-five years made a single step in advance on this important subject.

Mr. Bennet has a personal story connected with Romilly which, if he would only have told it, would have illustrated the singular manner in which obsolete customs and procedure linger in the legal system of this country for generations after they have disappeared from practice. We give so much of the story as Mr. Bennet vouchsafes in his own words, and thus afford our readers a favourable specimen of his style:—

"A poor young woman of the name of Mary Ann Dix, in January, 1812, had been a prisoner in the goal at Bristol for nearly two years. She had been originally summoned before the Episcopal Consistory Court for defaming the character of a married woman of the name of Duffy, with whom she had had a quarrel in the street. She refused to retract this aspersion on her opponent's fair fame, was pronounced to be contumacious, and was consequently sentenced to do penance in her parish church of St. Mary Redcliffe, and pay some amount of costs which her extreme poverty prevented her from doing. She herself a pauper, and her father also, but who had managed to contribute to her maintenance in goal from the charity of others. The sentence of penance was rewarded by a dole, we accidentally encountered smoking his cigar, and attired in morning gown, morocco slippers, and, on the steps of an anything but humble tenement, in one of the second-rate streets of Piccadilly. Truly dignity and impudence were never more conjointly personified! On the 16th instant a great sentence was created in the neighbourhood of the Westminster Bridge Road by the appearance of a female carrying a baby and specimens of croquet work, and in less than five minutes received little more than eighteen donations.—*Parochial Critic*.

* Select Biographical Sketches, from the Note-Books of a Law Reporter. By William Heath Bennet, barrister-at-law, London: George Routledge and Sons, 1867.

But to have exacted the issuing of this writ, much more the carrying the exigency of it into execution, would have pushed the joke a little too far. In this dilemma, and as the Insolvent Act then in operation did not take cognizance of ecclesiastical cases, it was thought advisable to petition Parliament on the subject, and our friend Mr. Vowles was deputed to attend in London, and superintend the presentation of this petition. It was by him entrusted to Sir S. Romilly, who advised that it should be presented by general abuses of the Ecclesiastical Courts in the kingdom. I attended with my father and Mr. Vowles at many of the meetings with Sir S. Romilly, in which discussions were taken place in the lobby of the old House of Commons, and other places. He was pleased to notice me, and I was several times patted on the head encouragingly by him."

The friendly pat seems to have driven out of Mr. Bennet's head all memory of the poor young woman and her fate, for not another word is said about her.

The next dignitary on the list is Lord Eldon, concerning whom the world has heard countless stories—of his wit, his manners, his obstinacy, his vast legal erudition. Mr. Bennet is not the man to add anything remarkable; most of his reminiscences, which are more personal as regards Lord Eldon than in the other sections of the book, are of a very trumpery kind. One, however, deserves mention, which shows how near Lord Eldon was to contributing to the list of great lawyers who have made a mess of their own private affairs:—

"In the latter part of the year 1828, I was summoned to attend the execution of his Lordship's will in the parlour of his solicitor in Lincoln's Inn Fields. It was unfolded on the table, and to my great surprise, consisted of a bundle of papers, all in his Lordship's handwriting, and extending to a considerable length. It appeared to have been composed at various times; the writing being upon detached pieces of paper—some written on the backs of the sheets, in admitted confusion. His Lordship, however, pronounced it to be his last will and testament; and his execution of it was duly attested by the three then necessary witnesses, myself the last. Immediately on the ceremony being completed, Mr. Vowles, Mr. Wilson, said, 'Now, my Lord, I will forthwith take this to the Brodie' (the eminent conveyancer, and his next-door neighbour), and let him consider this as a proper preparation of your Lordship's will for this world and the next. 'Well, Wilson, do as you like with it, for perhaps you are right. The anxiety of it will, at any rate, be off my shoulders—and put it upon Brodie's.' This will was subsequently settled by Mr. Brodie upon these instructions; but was not, however, the last will which his Lordship executed."

Concerning Lords Campbell and Truro we have eighty very dull pages, enlivened by the one anecdote of two rival attorneys' clerks having had a race which should be the first to retain the latter in a cause when he was at the bar, and of the loser having proposed that they should toss up for the services of a living advocate, destined perhaps to equal greatness, in which the dispute was not terminated so readily or so amicably. One-third of the life of Lord Lyndhurst, which closes the series, is taken up with some boyish letters written by him from America, which are certainly not worth publication, even the Latin in which they were originally composed, much less in Mr. Bennet's translation. There is also a detailed account of the author's being sent to France to obtain depositions in corroboration of the statements published by O'Meara, Napoleon's medical attendant at St. Helena. The only connection of Lord Lyndhurst with the story is that he, as Solicitor-General, on seeing these documents advised the Government to discontinue criminal proceedings against O'Meara for libel on Sir Hudson Lowe, but the story itself might be interesting if better told. We are not sure that the best things in the book are not the photographs that illustrate it, which are taken from portraits, and which at least serve to show what fashionable painters made of the faces of six, if not all of them hand-some, yet certainly able and accomplished lawyers.

FRANKLIN SCENE IN A MINE.—FIVE LIVES LOST.—A sad accident occurred in the North Levant Mine, St. Just, on the 1st April. Two miners were stopping in the 70 fathom level, going down, and knew they approached part of an adjacent mine, Whell Mainland, which had not been worked for thirty years. They did not, however, anticipate danger. The two miners were using hammer and picker in soft ground when water trickled through to them. It momentarily increased, and when all at once a force rushed down 3 feet long and 9 inches wide. Thomas Oats and his son and James Nicholas ran for their lives a distance of 40 fathoms to Wheel Gage shaft, and escaped. The stream, which must have been the outpour of the adjacent mine, was so violent that it carried down 7 or 8 fathoms to a winch which led downwards to the 84. East of this Winch Thomas, aged 33, his son William, 22, and James, 20, were at work. The father and younger son were swept from their feet, and the latter was hurled on to a piece of wood, and remaining quivering, was saved. The father was hurled at least 50 fathoms and found quite dead. James had not been discovered, but of his ultimate fate it is not the least doubtful. William remained in peril for a quarter of an hour, then descended, groped his way in the dark over the place where his father lay dead and covered with debris, and escaped up a shaft. Between the 84 and the 100 fathom level were two sons of Captain Thomas, the resident agent—James, 22, and a lad of 13; they were in a winch thirty fathoms east of the engine shaft. They were washed down to the 100, and along it nearly to the engine shaft, where they were hurled. This level, carrying with it loose and splintered timber, stones, and rubbish, it threw from the tramroad a wagon, hung it across the level, and this formed a barricade, against which the brothers were hurled. James was found breathing, and was speedily raised to the surface, where Mr. Richard Quick, a surgeon who resides near was in waiting, and Captain James Bennett, the other agent, and restoratives, blankets, &c., were sent down twenty minutes, but was speechless. His weaker and younger brother was fearfully maimed. Nearly every bone in his body was crushed, and the splintered wood had pierced him several times. John Humphries, jun., an over-zealous miner, the rush of the water in the 100, escaped to the surface, came up it against a heavy fall of water, and escaped. Richard Warren, an experienced and cool miner who has seen death in every form, was with William Warren, his son, a young man of 21, and his nephew, aged 17, at work in the 115th level. They were 30ft. from the winch down which the water streamed. He heard the torrent coming, urged his younger companions to get prompt but collected, and sent them on in front of him. They crossed under the winch, down which rushed the stream, and of course, were at once in darkness. As they approached the shaft, William passed him, because he knew where it was, and it was the shaft. At this time the water tumbled around them four feet deep. Warren could not find his nephew. He had not many days recovered from a fever, and was weak. He went down the stream in the face of the fall into the shaft at a rate he has not yet been found. The escape of Warren and his son, two powerful men, was wonderful. The rising tide of water which fell from above was so violent that they could only cling to the ladder. As their enemy rose about them, however, it was necessary to ascend or perish. The father led. In the level they went up what seemed to him a useless struggle, and to pray during their last minute or two. The father dragged him to the shaft, where the falling water drowned all sound of voices. By a kind of instinct, as they rose, the son placed each hand on an iron bar, and under the father's foot. At the moment of the struggle, and the father, who felt a weight rushing down upon him, and who he described as being as light as a feather, he moved upwards, step by step, fourteen fathoms, and saved himself. By this sad accident five lives are lost. Three bodies have already been recovered. One poor woman has lost her husband and a widow, with six young children, has lost the eldest, her main supporter; and Captain Thomas has lost his two sons.—*European Times*.

* Preamble to the Mutiny Act.
• By Mr. Cushing. *Opinion of the Attorney-General of the United States*, vol. viii, p. 373.
• *Opinion of the Attorney-General*, *id supra*.
• *Howard's Parliamentary Debates*, 3rd Series, vol. xvi, p. 680, April 1, 1851.

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F. Laffer, Upper South Head Road.
Thos. Pierce, William and Yurong and Stanley streets,
Woolloomooloo.
John Davis, 3, Market-street, between Kent and Sussex
streets.
P. Davy, opposite National School, Paddington.
E. Glover, Balmain.
W. West, Newtown and Cook's River.
Joseph Hinchliff, Waterloo.
Mrs. R. Scholey, Circulating Library, Parramatta-st.
W. E. Davy, Boat Warehouse, North Shore.
W. Hogan, tobacco-merchant, King-street East.
W. McIntyre, 461, George-street South, opposite Mosman-
road.

